

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

UNITED STATES OF AMERICA,

v.

Case No. 5:06-CR-55 (HL)

RAMIRO ESPINOZA-FRIAS,

Defendant.

ORDER

Currently pending before the Court is a Pro Se Motion Requesting A Court's Order to Obtain His Legal Documents, and Leave to Proceed In Forma Pauperis filed by Defendant Ramiro Espinoza-Frias (Doc. 34).

Defendant has requested that the Court provide him with the following, free of charge: "Copy of ALL arraignment proceedings [i.e. Indictment, Plea Agreement, Debriefing Letter, Pre-Sentence Investigation or Report (PSI/PSR), Discovery, Plea and Sentencing Hearing's Transcripts, etc.]" Defendant states that he needs this documentation "in order to finish some Habeas proceeding," and that his copies of these documents were lost by the Bureau of Prisons during Defendant's transfer to the McRae Correctional Facility.

With regard to the transcripts, government monies may be allocated to fund the preparation of transcripts under 28 U.S.C. § 753(f). This statute provides, in part:

Fees for transcripts furnished . . . in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for

transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C. § 753(f).

Defendant has provided no information about the habeas proceeding he allegedly has pending. The Court assumes that since Defendant is housed in federal custody, the proceeding is under 28 U.S.C. § 2255. For a transcript to be provided without cost in a § 2255 case, the Court must certify that the suit or appeal is not frivolous and that the transcript is needed to decide the issue or appeal presented by the suit. On the information currently before it, the Court cannot make that certification.

Defendant also makes a request to proceed in forma pauperis ("IFP") as a pro se litigant. He does not say whether he seeks to proceed IFP on appeal, or in another case, or in what capacity. In any event, Defendant has not complied with the statutory requirements for proceeding IFP. In addition, the fact that Defendant has not been permitted to sue or appeal IFP is another reason why he is not currently entitled to a free transcript. See 28 U.S.C. § 753(f) (section 2255 petitioners are not entitled to free transcripts unless they are "persons permitted to sue or appeal in forma pauperis").

As for Defendant's request for copies of the indictment, plea agreement, and similar pre-sentencing documents, those items should be available from his former

counsel of record. Defendant should contact counsel and request a copy of the documents he seeks from the case file.

Accordingly, Defendant's Pro Se Motion Requesting a Court's Order to Obtain His Legal Documents, and Leave to Proceed In Forma Pauperis (Doc. 34) is denied.

SO ORDERED, this the 11th day of January, 2010.

s/ *Hugh Lawson*
HUGH LAWSON, SENIOR JUDGE

mbh